IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.288 OF 2007
IN
WRIT PETITION NO. 2803 OF 2006

Mazagon Dock Limited ....Petitioner.

V/s

Shri Rohidas Bhagoji Duraphe ....Respondent.

Mr. Shailesh Pathak for applicant/respondent in support of the Notice of Motion.

Mr. P.K. Rele, Senior Counsel with Mr. Rajesh P. Rele i/b Piyush Shah for the Petitioner.

CORAM: V.M. KANADE, J.
DATE : 27th June, 2007

P.C.:-

1. Heard the learned Counsel appearing on behalf of applicant/respondent and the learned Senior Counsel appearing on behalf of the petitioner.

2. This Notice of Motion is taken out by the respondent herein, seeking direction from this Court directing the original petitioner to pay full wages under section 17-B of the Industrial Disputes Act, 1947. The learned Counsel appearing on behalf of respondent invited my attention to the award passed by the Presiding Officer, 1st Labour Court,

Mumbai. The operative portion of the said award reads as under:-

"**A W A R D**

i) The reference is partly allowed.

ii) The 2nd party workman, Shri Rohidas Bhagoji Duraphe is entitled to get 50% of back wages w.e.f. 27.3.1998 till today.

iii) The 2nd party workman, Shri Rohidas Bhagoji Duraphe is entitled to get 40% wages from today till the date of retirement on super-annuation by way of compensation instead of reinstatement.

iv) The 1st party is at liberty to allow the 2nd party to report for work instead of paying compensation, if the company desires so.

v) The 2nd party is entitled to get continuity of services w.e.f. 27.3.1998 and he is also entitled to get all legal dues payable to him."

It is submitted that in clause (iv) of the said operative part, liberty is granted to the petitioner herein to allow the

respondent to report for work instead of paying compensation. The learned Counsel for respondent also invited my attention to the grounds in the Petition more particularly grounds (hh) & (ii). He submitted that the Petitioner also, in its Petition, challenged the reinstatement of the respondent. He submitted that, therefore, the respondent was entitled to get full back wages during the pendency of the Petition. He relied upon the judgment of the Division Bench of this Court in Vishwas Shankarrao Joshi Vs. Bank of Maharashtra reported in **2005(5) Bom. C.R. 419.**

3. Mr. Rele, the learned Senior Counsel appearing on behalf of the Petitioner, on the other hand, submitted that the reliance which was placed on ground (ii) of the Petition by the respondent herein is misplaced. He submitted that the operative part of the award was very clear and that the respondent was granted compensation and no order of reinstatement was passed. The option, however, was given to the Company to reinstate him if they so desire. He submitted that, therefore, provisions of section 17-B would not apply to the facts of the present case.

4. The submissions made by the learned Counsel appearing on behalf of respondent cannot be accepted at this stage. Perusal of the operative part of the award clearly discloses that no order of reinstatement has been passed in favour of the respondent and only compensation has been directed to be paid to him. Thus, provisions of section 17-B

would not strictly apply to the facts of the present case. Another feature which has to be noted here is that while admitting this Petition, this Court by order dated 13/11/2006 granted interim order staying operation of the award of the Labour Court dated 06/06/2006. This order has been passed ex parte and the respondent herein was not heard before the said order was passed. Hence it shall be open for the respondent herein to apply for vacating the interim order or for modifying the interim order which has been passed by this Court. In this context, it would be relevant to consider the observations in paras 9 and 11 of the judgment of the Apex Court in Regional Authority, Dena Bank Vs Ghanshyam, reported in **2001 (II) L.L.J.274.** Paras 9 and 11 of the said judgment read as under:-

> "9. It may be noticed that section 17-B of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice Dena Bank's case (supra). The High Court or this Court may, while entertaining, employer's challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement

without interfering with payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it, etc. and/or impose such conditions as to the payment of the salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice."

11. We have mentioned above that the import of section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement and the Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which section 17-B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of the case - than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of section 17-B, may, there is no reference to that section in the orders of the High Court, therefore, in this case the question of

> payment of “full wages last drawn” to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.”

Thus, perusal of the aforesaid observations reveal that this Court may, while granting interim relief, consider grant of appropriate interim relief. However, in the present case, there is no prayer made in the Notice of Motion for vacating the interim order or for modifying the interim order. At this stage, it would not be possible for this Court to pass any order in favour of the respondent. Liberty, however, is given to the respondent to take out appropriate proceedings and after such proceedings are taken out, this Court may, after hearing the other side, pass appropriate orders.

5. With the above observations, Notice of Motion is disposed of with liberty as stated above.

(V. M. KANADE, J.)